

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-18 are presently active in this case. The present Amendment amends Claims 1-2, 6-8, 10, 15-17.

The outstanding Office Action provisionally rejected the claims on the ground of nonstatutory obviousness-type double patenting over the claims of copending U.S. Application Serial No. 10/287,959. Claims 1-18 were rejected under 35 U.S.C. § 102(e) as unpatentable over Imanaka et al. (U.S. Patent No. 6,282,669) in view of Katsube et al. (U.S. Patent No. 6,188,689).

In response to the provisional double patenting rejection over the claims of copending Application Serial No. 10/287,959, Applicant respectfully traverses the rejection. However, in the spirit of moving prosecution forward for the present application, a Terminal Disclaimer is filed herewith thereby overcoming the rejection. Applicant notes that the filing of a Terminal Disclaimer to obviate a rejection based on non-statutory double patenting is not an admission of the propriety of the rejection.¹

In response to the rejections of the claims under 35 U.S.C. § 102(b) and 35 U.S.C. §103(a), independent Claims 1 and 10 are amended to further define the claimed network. Specifically, independent Claims 1 and 10 are amended to require a virtual link mechanism configured to limit a transfer time from the source subscriber equipment to the destination subscriber equipment, and that the switch is configured to rely on a configuration table to identify a virtual link to be switched and to further identify a number of packets for the virtual link. These features find support in the original disclosure, for example at page 7,

¹ *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991), indicating that the “filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.”

lines 1-14. Thus, the changes to the claims do not raise a question of new matter. Claims 1-18 are also amended to correct noted informalities. In light of the present amendment, Applicant respectfully requests reconsideration of the outstanding rejections and traverses the rejections, as discussed next.

As noted above, independent Claims 1 and 10, as amended, require a virtual link mechanism configured to limit a transfer time from the source subscriber equipment to the destination subscriber equipment, and that the switch is configured to rely on a configuration table to identify a virtual link to be switched and to further identify a number of packets for the virtual link. The combination of the Imanaka et al. patent and the Katsube et al. patent fails to disclose the above-noted features of amended Claims 1 and 10. In addition, there is no apparent reason to modify the Imanaka et al. network so as to arrive at Applicant's claimed network. It is not clear how such modification could be achieved without a substantial reconstruction or redesign of the Imanaka et al. network.²

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 1-18 is earnestly solicited.

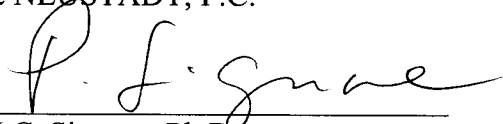
² See In re Ratti, 270 F.2d 810, 813, 123 USPQ 349, 352 (reversing an obviousness rejection where the "suggested combination of references would require a substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate.")

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Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

A handwritten signature in black ink, appearing to read "P. J. Signore", is written over a horizontal line.

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